

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	
)	
(Roanoke Rapids and Garysburg, North Carolina))	MB Docket No. 03-6
)	RM- 10595
)	
(Upper Sandusky and Caledonia, Ohio))	MB Docket No. 03-7
)	RM- 10596

NOTICE OF PROPOSED RULE MAKING

Adopted: January 15, 2003

Released: January 17, 2003

Comment Date: March 10, 2003

Reply Comment Date: March 25, 2003

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth two separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules to allot new channels in two localities. Each proposal involves a change of community of license that would provide a first local transmission service at the proposed community. Each petitioner, MainQuad Communications, Inc., licensee of Station WPTM(FM), and Clear Channel Broadcasting Licenses Inc., licensee of Station WYNT(FM), states that it will file an application for construction permit at each locality to effectuate the change of community if the channel is reallocated. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. Each of the petitioners filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the

¹ See *Change of Community R&O*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

FM Allotment priorities.'

3. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 03-6; RM-10595

Petitioner: MainQuad Communications, Inc. ("MainQuad")
c/o John M. Pelkey, Esq.
Garvey, Schubert & Barer
5th Floor, 1000 Potomac Street, NW
Washington, DC 20007

Proposal: Reallot Channel 272A from Roanoke Rapids, North Carolina, to Garysburg, North Carolina, as the community's 'second local aural transmission service,' and modify the license for Station WPTM(FM) to reflect the change of community,

<u>Community</u>	<u>Channel</u>	
	<u>Present</u>	<u>Proposed</u>
Roanoke Rapids, North Carolina	271-A	---
Garysburg, North Carolina	276A	272A, 27bA

Coordinates: 36-29-22 NL and 77-39-08 WL

Additional Information: In support of the reallotment, MainQuad presents evidence of the community status of Garysburg, North Carolina.⁴ It also states that this proposal would serve the public interest because Garysburg will receive its first local aural transmission service and Roanoke Rapids will not be deprived of local aural transmission service, because it will continue to receive local transmission service from one A M and three noncommercial educational FM stations.⁵ We note that this would be the

² The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988).

³ Channel **276A** was allotted at Garysburg in MM Docket 00-245. See *Alberta, VA. Whitakers, NC, Dinwiddie, VA and Garysburg, NC*, 17 FCC Rcd 8781 (**MB** 2002) (recon. pending).

⁴ Garysburg is an incorporated community with a 2000 U.S. Census population of 1,254 persons. It has an elected mayor and commissioners. It has its own police force, post office and zip code, as well as a school, family resource center, and several churches and businesses.

⁵ Station WCBT(AM) and noncommercial educational FM Stations WZRU, WTRP-FM, and WPGT will continue to serve Roanoke Rapids.

second local aural transmission service at Garysburg. We seek comment on these issues. Channel 272A can be reallocated from Roanoke Rapids, to Garysburg, North Carolina at MainQuad's requested existing transmitter site 9.4 kilometers (5.8 miles) northwest of the community. A preliminary engineering analysis shows that from the proposed transmitter site, there is a loss in service to an area with a population of approximately 6,000 persons, all of whom will continue to receive service from at least 5 or more aural services. No urbanized areas are involved.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

B. MB Docket No. 03-7; RM-10596

Petitioner: Clear Channel Broadcasting Licenses, Inc. ("Clear Channel")
c/o Marissa G. Repp, Esq.
F. William LeBeau, Esq.
Hogan & Hartson, LLP
555 13th Street, N.W.
Washington, DC 20004

Proposal: Reallot Channel 240A from Upper Sandusky, Ohio to Caledonia, Ohio, as the community's first local aural transmission service, and modify the license for Station WYNT(FM) to reflect the change of community.

<u>Community</u>	<u>Channel</u>	
	<u>Present</u>	<u>Proposed</u>
Upper Sandusky, Ohio	240A	---
Caledonia, Ohio	---	240A

Coordinates: 40-3543 NL and 93-02-59 WL

Additional Information: In support of the reallocation, Clear Channel presents evidence of the community status of Caledonia, Ohio.⁶ It also states that this proposal would serve the public interest because Caledonia would receive its first local aural transmission service and Upper Sandusky would continue to receive local transmission service from noncommercial educational Station WXML(FM). We seek comment on these issues. Channel 240A can be reallocated from Upper Sandusky to Caledonia, Ohio, at Clear Channel's requested site 8.2 kilometers (5.1 miles) southwest of the community. A preliminary engineering analysis shows that from the proposed transmitter site, there is a loss in service to an area with a population of approximately 26,000 persons, which will continue to receive service from at least 5 or more aural services. No urbanized areas are involved. Canadian concurrence will be requested for this allotment.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

4. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference only the specific docket to which the

⁶ Caledonia is a census designated place with a 2000 U.S. Census population of 578 persons. It has its own mayor and city council, post office, zip code, police and fire department, school, churches and businesses.

filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 10, 2003, and reply comments on or before March 25, 2003, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷

7. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁷ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(h) of the Communications Act of 1924, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rule, and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties **must** be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Information Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington D.C. 20554.